

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9058 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PURIBEN VITTHALBHAI PATEL

Versus

DISTRICT PRIMARY EDUCATION OFFICER

Appearance:

MR KB PUJARA for Petitioner

MR HS MUNSHAW for Respondent No. 1

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 19/03/98

ORAL JUDGEMENT

Rule. Mr HS Munshaw learned advocate waives service of rule for the respondents. Heard the learned advocate for the parties.

The petitioner has joined the services as a primary teacher under the respondent at village Mesar Primary School on 5.12.1986, since then she is serving there. It is the case of the petitioner that her husband

is also serving as primary teacher in Primary School at Ranuj since 1.2.1984. The distance between village Mesar and Ranuj is about 45 km. and, there is no direct mode of transfer. It is further the case of the petitioner that the father-in-law of the petitioner is aged about 90 years and the mother-in-law is aged about 85 years and the children aged about 12 and 6 years of the petitioner are staying with her husband at village Ranuj. Moreover, the mother of the petitioner's mother-in-law is physically handicapped and permanently disabled requiring constant attendance and attention of the family members. The petitioner has made a request for her transfer from Mesar Primary School to Ranuj Primary School right from 1987 till 1997 or to any other primary school in the vicinity of Ranuj on the ground of her family circumstances. It is, therefore, the grievance of the petitioner that the respondent has failed to consider and favourably decides the petitioner's request which she is making since last 10 years. The petitioner has produced representations made for all these years and has also produced the letter dated 13.11.1997 addressed by the Head Master, Ranuj Primary School to the District Education Officer, Mehsana, the respondent-herein, wherein, he has specifically stated that two teachers, namely; Haribhai M Patel and Champaben I Patel are retiring with effect from 31.5.1998 and, therefore, the school may be permitted to fill up those two vacancies. Mr Munshaw for the respondent has submitted that so far as Ranuj Primary School is concerned, where there are two posts are likely to fall vacant in the month of May, 1998. Over and above the petitioner, there are 4 other incumbents who have also applied for the transfer to the said place. Mr. Munshaw has further submitted that the petitioner's name is at sr. no. 3, therefore as and when her turn comes, her case will be considered. Mr Munshaw further submitted that as per the provisions of sec. 24(1) of the Bombay Primary Education Act, the prior approval of the Director of Primary Education is necessary for giving preference to a particular incumbent to transfer to a particular place on request basis. In substance, on behalf of the respondent a procedural part is putforwarded. It is very unfortunate that the case of the petitioner has not at all been considered and appreciated for all these years i.e. right from 1987 till 1997 even though on every year she has made representations continuously. The petitioner has never insisted that she may only be transferred at village Ranuj, but has given option for so many other places which are in the vicinity of village Ranuj where her husband, in-laws and children are residing. The petitioner has never sought any special favour by

insisting upon a place of only one place which should be her preference and, therefore, prior approval of the Director of Primary Education is necessary as contended by Mr Munshaw. Instead of showing grievances, and by not deciding the case of petitioner and keeping it pending for long period of 10 years speaks volumes about the administration which is being run by the respondent. It is a hightime that the respondent must come out from the prison of procedure and to consider the plite of a citizen, especially a lady employee who has to remain away in a village out of her family all alone and to face all hardship and inconvenience.

Considering the facts and circumstances of the case, the petition is required to be allowed and is hereby accordingly allowed. The respondent is directed to consider the case of the petitioner forthwith alongwith the case of two other incumbents who are above the petitioner as stated by Mr. Munshaw. If anyone of them is not inclined to resume at Ranuj, in that event, straightway transfer order of the petitioner be issued transferring the petitioner from village Mesar to Ranuj no sooner the post falls vacant. For any reason, both the said incumbents are ready to resume at Ranuj, the respondent is directed to consider the case of transfer of the petitioner which is nearer to village Ranuj. The respondent shall do this exercise on or before 30.4.1998. Rule made absolute with no order as to costs.
